

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Robert Mitchell,

Petitioner,

vs.

Warden McFadden,

Respondent.

Civil Action No.: 5:17-105-BHH

Opinion and Order

This matter is before the Court upon the Magistrate Judge's Report and Recommendation ("Report") (ECF No. 14), which recommends that the § 2254 petition be dismissed *without prejudice*. For the reasons set forth below, the Court agrees with the Report and dismisses the petition *without prejudice*.

BACKGROUND

Petitioner, Robert Mitchell, a state prisoner confined at Lieber Correctional Institution, Ridgeville, South Carolina, who is proceeding *pro se*, brought this action pursuant to 28 U.S.C. § 2254. (ECF No. 1.)

Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(d) (D.S.C.), the case was assigned to Magistrate Judge Kaymani D. West. On March 6, 2017, the Magistrate Judge issued a Report recommending that the § 2254 petition be dismissed without prejudice . Petitioner was granted an extension of time, but has filed no objections and the time for doing so expired on April 10, 2016.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to the district court. The recommendation has no presumptive weight. The responsibility to make a final

determination remains with the district court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the Court need not conduct a *de novo* review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982) (“[D]e novo review [is] unnecessary in . . . situations when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendation.”). Furthermore, in the absence of a timely filed, specific objection, the Magistrate Judge’s conclusions are reviewed only for clear error. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court adopts and incorporates the Report and Recommendation (ECF No. 14) by reference into this order. It is therefore ORDERED that this action is DISMISSED *without prejudice*.

IT IS SO ORDERED.

/s/ Bruce Howe Hendricks
United States District Judge

April 17, 2017
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.